

APPEAL NO. 030466
FILED APRIL 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 23, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth quarter. The claimant appeals and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to eighth quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At the hearing, it was undisputed that the claimant had not returned to work and had not documented a job search during the relevant qualifying periods. The claimant was basing her entitlement to SIBs for the disputed quarter on an assertion of a total inability to work. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with his or her ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that there was no narrative report from a doctor which specifically explained how the claimant's compensable injury caused a total inability to work. A review of the record does not indicate that the hearing officer improperly applied the applicable rule.

Whether a claimant is entitled to SIBs based on having no ability to work is a factual determination for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Roy L. Warren
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge